

Asian Law Caucus Reporter

ASIAN LAW CAUCUS

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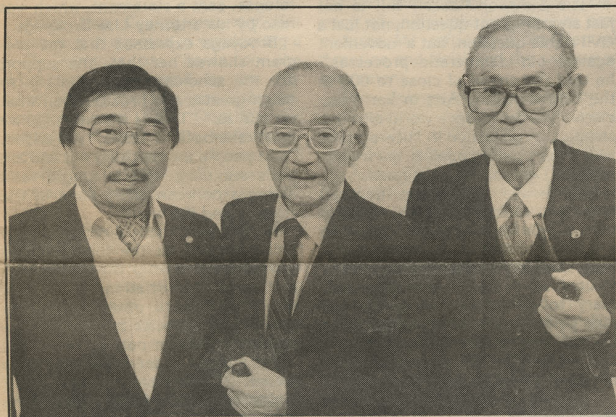
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Hirabayashi Trial Exposes Gov't Misconduct



Gordon Hirabayashi (left), Min Yasui (middle), and Fred Korematsu (right) fought to overturn their WWII convictions. (Steven Okazaki photo)

Gordon Hirabayashi, the last of the three Japanese Americans to have his WWII conviction judicially reviewed, won an initial victory on June 17, 1985, when the judge refused to accept most of the government's exhibits.

U.S. District Judge Donald Voorhes granted the motion by Hirabayashi's lawyers to exclude close to 1,000 exhibits, most of which were recently declassified. Only about a dozen of the documents concerning actions by the Justice Department, War Department and other government agencies concerning Japanese Americans during the war were allowed.

Hirabayashi's case is the only one to force the government to defend the legal underpinnings of what is now widely regarded as a grave national mistake. The government continues to maintain there was evidence to support a national security danger. New documents have been uncovered, however, showing that the government's actions at the time were racially motivated.

At a hearing on June 20, Edward Innis, a former Justice Department attorney, testified that when he prepared a Supreme Court brief defending the army's position on the West Coast, his superior Solicitor General Charles Fahey told him to exclude contradictory evidence from the brief. Innis introduced a memo he wrote to Fahey at that time that excluding those information could "constitute a suppression of

evidence."

FBI and Federal Communications Commission reports contradicted army contentions, Ennis told the court. For example, he said, that army reports indicated that lights on California hillsides indicated surreptitious signals to Japanese submarines, but an FBI check showed that these were farms where people used flashlights to go to outside toilets. An FBI memo concluded that the army was getting hysterical when it cited an Oregon power outage as sabotage, but instead was caused by cattle scratching their backs against power lines, he added.

Hirabayashi was a student at the University of Washington when he was convicted for failing to observe curfew regulations imposed on all Japanese Americans during WWII. He was 23 at that time, and like Min Yasui and Fred Korematsu, believed that the curfew and internment were unjustified, violating the civil and constitutional rights of over 120,000 Japanese Americans. His conviction was upheld by the U.S. Supreme Court in 1943.

Korematsu's case was reopened in 1983 in San Francisco. Judge Marilyn Hall Patel found government misconduct when it suppressed evidence in his 1942 trial. She then vacated his conviction. Yasui's conviction was struck down last year with the government's acquiescence in Portland, Oregon. However, the judge refused

ALC Supports SF Contractor Ordinance

The Asian Law Caucus together with 4 other legal groups, are representing a dozen minority, women and local businesses, as intervenors in a federal lawsuit. They seek to uphold a San Francisco City ordinance providing affirmative action in the city use of minority, women and local businesses.

A lawsuit, filed November 5, 1984 by 6 corporations including the Associated General Contractors of California, seeks to eliminate the ordinance. There are 11 appellees intervenors and they are represented by Robert Harris of the Charles Houston Bar Association, Judith Kurtz and Shauna Marshall of the Equal Rights Advocates, William McNeill of Pearl, McNeill, Gillespie and Standish, Eva Paterson of the SF Lawyers Committee on Urban Affairs and, Ed Lee and Bill Tamayo of the Asian Law Caucus.

In response to a long-standing discrimination in the city's contracting practices, the San Francisco Board of Supervisors on April 2, 1984 enacted the Minority Women/Local Business Utilization Ordinance. The ordinance sought to ensure that the city's prime contractors in the provision of goods and services would be awarded to minorities, women, and local businesses. 40% of the city's eligible contract dollars (with 30% going to minorities and 10% to women) have been allocated but departments are expected to minimally comply with only 12%.

STUDY SHOWS DISPARITY

A study conducted by the City's Human Rights Commission found that despite the fact that over 33% of San Francisco based firms are minority-owned and 25% women-owned, the City awarded these businesses less than 2.9% of 40% of its prime contract dollars during 1981 and 1982. The study further revealed that the City has a minority population of nearly 50%, a female population of close to 60% and a civilian workforce that is 45% female.

to pursue the allegations of government misconduct.

Even with the vacation of the Korematsu and Yasui wartime convictions, the Supreme Court decisions still stand as precedents for governmental actions based solely on ancestry.

Although the Justice Department agrees that Hirabayashi's conviction should be nullified, it has disagreed to go into an inquiry into the events that led to the internment 43 years ago. U.S. attorney Victor Stone stated

The only plausible explanation, asserted the intervenors brief, for this marked statistical disparity and low percentage of MBE/WBE participation is that they continue to suffer from the present effects of past discrimination against them.

The HRC investigation also found compelling evidence that the cost of doing business in San Francisco is 15% greater than in other parts of the country and the State of California. Thus, local businesses are at a competitive disadvantage with non-local competitive bidding.

Even with progressive anti-discrimination laws in the city prohibiting contractors from discriminating and requiring them to integrate the workforce, the HRC found that in order to effectuate the goals of the nondiscrimination ordinance, affirmative steps were needed to provide minority entrepreneurs an opportunity to develop and gain a foothold in the marketplace.

PRIME CONTRACTS DENIED

Many minority and women entrepreneurs complained that they were victimized by the city's discriminatory practice, whereby they were often denied contracts because they lack experience in managing their own businesses. "But by denying us that contract, the city has denied us that opportunity," argued one of the minority contractors.

The virtual exclusion of minority and women owned businesses causes irreparable economic and social harm to these groups and adversely affects the economic health of the city, the intervenors argued in the brief. Moreover, the lack of a city policy to remedy existing discriminatory practices only perpetuates the present effects of past discrimination.

Plaintiffs arguing against the ordinance stated that the local business preference impairs their constitutional right to travel. The City in defending its position responded that

(Continued to page 2)

that "everyone has learned from the lesson of that tragedy without needing to reopen those same wounds to determine what was the particular problem that caused a poor judgement to be made."

But Hirabayashi, his attorneys, and the Committee to Reverse the Japanese Wartime Cases feel that the government must be accountable for its actions. They want the courts to vacate his conviction with a review of events leading to the internment. □

T & W Workers Harassed, Fired After DOL Hearings

After almost two years of litigation against a major garment contractor, workers from T&W Fashions continue to show their opposition to unlawful and exploitative business practices. In the most recent demonstration of support for the lawsuits against T&W Fashions, over 80 workers met with the U.S. Department of Labor on March 20 and 21, to discuss both the lawsuit and the role that the workers must play in the legal action.

The Department of Labor filed its lawsuit for over \$800,000 in minimum wage and overtime violations in October of 1984. This suit, on behalf of past and present workers of T&W, was the result of a year-long investigation of the contracting shop. It also followed a suit by the Asian Law Caucus in November, 1983, for minimum wage and overtime damages, and for damages caused by unfair employment practices on behalf of thirteen former workers (See ALC Reporter, July-December 1984).

Shauna Marshall and Marjorie Fujiki of Equal Rights Advocates and Patricia Shiu of the Employment Law Center have joined Michael Wong and Dennis Hayashi of the Asian Law Caucus in representing the T&W workers.

Dennis Hayashi, lead counsel for the thirteen workers, commented, "We initially had to depend on just a handful of past workers who had enough courage to come forward and challenge T&W's unfair practices. Support is clearly growing for the suits, but workers will still have to be brought together if the lawsuit is to gain momentum."

CONTINUING HARASSMENTS

This growing support has not gone unnoticed by the T&W employers. From the beginning of the legal actions, the owners of T&W have waged a steady campaign to try to keep their workers in line. This had included direct harassment, proposed restructuring of work days and hours, and threats that the lawsuits would put T&W out of business.

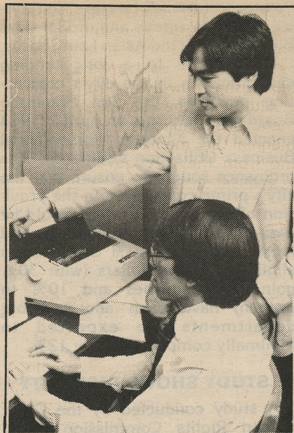
Tammy Ho, owner and president of T&W Fashions for example, appeared at the Federal Building, where the 80 workers were meeting with the Department of Labor. "It was an obvious intimidation tactic to prevent the workers from going to the meeting," said Esther Leong, a Caucus law clerk who has spent a great deal of time working directly with the T&W clients. "Tammy Ho and her attorney attempted to get into the meeting and had to be forcibly turned away by federal marshalls. They then stood by the main entrance, taking down names of workers who attended the meeting with DOL."

Harassment did not stop there. Two days after the DOL meeting, two workers had their hours reduced below half-time, allegedly due to lack of work. However, the employer had made it clear to the workers that she was angry with her workforce for attending the meeting, and in particular, angry at two workers for speaking up at the meeting.

The two workers were forced to resign because of the reduced working hours. One of them filed for unemployment insurance benefits but was rebuffed by T&W stating that her reduction was only temporary. The unemployment appeals administrative law judge found that work was available and that the reductions constituted retaliation against workers who assisted in the lawsuits. The worker, who was represented by Ed Lee, Caucus attorney, finally received her unemployment benefits.

Other workers continue to complain about ongoing harassment by T&W. This may lead to further legal action against T&W. Already, the Department of Labor has gotten a restraining order against T&W for harassing workers in any of its future meetings. These acts by T&W have actually generated more support among its workforce for the legal actions.

The Department of Labor's action is scheduled for trial in U.S. District Court in October. The action by the ALC, ERA and ELC is still in the process of discovery in San Francisco Superior Court, and has not been set for trial as yet. Because of the early trial date for the federal court case, attention will be focused on the October trial in preparing workers for their testimonies against T&W. □



Michael Wong (seated) and Dennis Hayashi (standing) sued T&W on behalf of 9 workers for backwages and overtime pay. (Monica Lee photo)

Address Change/Corrections?

This year, we will attempt to come out with 3 issues of the ALC Reporter with another one in September and December.

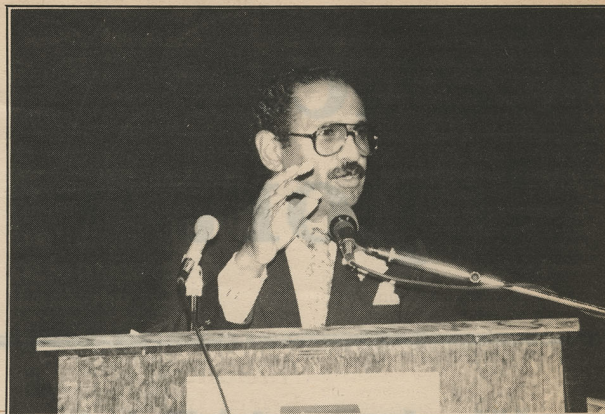
We are also in the process of revising our mailing list and would appreciate your cooperation in letting us know if you are either receiving duplicates, have moved, error in spelling of your name or address, or several of you in the same household or workplace can share the same mailing. Please use the form below for your convenience.

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Conyers: We need to Expand/Preserve Rights



Congressman John Conyers keyed the May 31st benefit program at the Palace of Fine Arts. (Tim Uyeki photo)

"We must take a broader perspective on the significance of immigrant rights," urged John Conyers, congressman from Detroit, Michigan and the keynote speaker at the Asian Law Caucus program May 31.

"The Simpson-Mazzoli Bill is not just an immigrant question, not just a civil rights question, but a movement against our democratic processes," he told the crowd of close to 600 at the Palace of Fine Arts in San Francisco. "We are at once world citizens, struggling for justice in Nicaragua as well as struggling against unemployment in Detroit," he continued.

The festive celebration honored those who took courageous stands in the struggle for immigrant rights. The event specifically honored Jack Elder, director of Casa Romero and a staunch advocate for providing sanctuary to Salvadoran refugees, and nine parents, who were plaintiffs in a lawsuit against the Oakland School District to compel implementation of bilingual education programs.

The program underscored the hardships and the courage of those who struggle for immigrant rights. Reflecting on his feelings when countersued

by the Oakland School District, Carlito Cardona, one of the honorees, stated that "it sure was lonely when faced with the wrong end of \$4 million." Elder, who was serving his sentence for helping a Salvadoran refugee, sent a statement, which was read by his attorney Lisa Brodyaga.

Brodyaga expressed that the program showed her that "the support (for the sanctuary movement) is so much greater and broader than what we realize." "That is the message we must take back to Texas," she added, "that people are reaching out and are understanding the struggle and linkages between other parts of the country and the world."

Asian Law Caucus director, Peggy Saika hoped that the fundraiser, in addition to showing the ALC's support and appreciation of others, would also spark other community groups and agencies to prioritize immigrant rights as part of their civil rights agenda. Indeed, the program's theme, "Immigrant Rights: Civil Rights Issue of the 80's," captures the work that needs to be done in this juncture of the struggle against a conservative trend. □

Minority Contractors...

(Continued from page 1)

the ordinance is not based on residency or duration of residence.

The Ordinance also seeks to reinforce existing City programs requiring prime contractors to integrate their workforce by using good faith efforts to subcontract with MBEs and WBEs. The subcontractor requirements are intended to assist MBEs and WBEs to develop their status and capabilities as prime contractors of the City/County of San Francisco.

Non-MBEs and Non-WBEs qualify for up to 88% of the city's eligible contract dollars and all exempt and waived city contract dollars not subject to the 12% minimum requirement. In addition, non-MBEs and non-WBEs may even participate in the

12% set aside contract dollars by owning up to 49% of the MBE or WBE enterprises. They may also participate in joint ventures with MBE/WBE and benefit from the set aside contract dollars.

The ordinance has flexible terms ensuring that it is not so rigidly applied as to resemble a quota system. The ordinance is constitutional because it contains sufficient safeguards ensuring that its implementation is narrowly tailored to the City's legitimate compelling interests, the brief continued.

In arguing against the plaintiffs, the intervenors stated that the ordinance also expires in 5 years from its effective date, unless the HTC, after conducting hearings, finds that the purposes identified in the ordinance have not been achieved. The ordinance is a "good faith effort" plan, they concluded. □

ALC Board and Staff

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From time to time, when you or your company are thinking of getting rid of equipment (typewriters, computers), cars or furniture in working condition, please let us know. We may be able to use them. Your in-kind contribution is also tax-deductible.

The Chiu's case is a typical housing problem in Chinatown. New landlords take over buildings occupied by tenants who've lived in the buildings for long periods of time, paying affordable rents. □

Two J-Town Sites to Remain

After several months of negotiations with the Redevelopment Agency (RDA), members of the Japanese community won a partial victory early May in stemming the conversion of the Kabuki Theatre into a nine-screen cinema complex.

ALC attorney Dennis Hayashi, who counseled the community opposition stated that the proposed conversion reopened old wounds in the community. "Most of what was J-town was completely razed by developers during the late 60's and early 70's," he stated, "and people have not forgotten that."

Steve Nakajo, executive director of Kimochi Kai, echoed the concerns of many in the community. "The theatre's use for ethnic functions would be severely limited, he said. In addition, 2,000 to 3,000 people who would frequent the theatres would compete with residents for parking spaces, which poses a real problem of congestion."

Ron Iwamasa of the Nihonmachi Community Development warned "We may be losing our sense of community if we are left without community facilities."

American Multi-Cinema, the developer interested in purchasing the Kabuki Theatre, is returning with revised plans before the RDA. Under a contract with National Braemar, the RDA has the right to oversee the



SF Board of Supervisors voted to keep the Peace Plaza for community use. (Hokubei Mainichi photo)

design and usage of the complex until 1992 with an automatic 10-year extension to 2002. This agreement does not give the RDA the authority to rule on the sale of portions of the center, but it gives the agency the power to prohibit substantial changes in architectural design and permitted uses.

Meetings are still being held with wider participation from the Black

community, who have been Japantown's historic neighbors, and also victims of redevelopment in the Western Addition. Hayashi stated that more discussions are anticipated to occur in the near future.

In a separate development, plans for the conversion of the Peace Plaza have been stalled. The Redevelopment Commission voted unanimously June 25 to support San Francisco

Board of Supervisors resolution introduced by Bill Maher forbidding any development on the Plaza.

The Plaza was purchased by Chinatown businessman Sinclair Louie. Louie intended to build three separate buildings, two over the ponds on each corner of Post Street and an L-shaped building along Geary Boulevard.

When this proposal came out in the open, community groups were taken by surprise. "I did not even know the plaza was private property. I always thought it belonged to the City," stated Sandy Ouye-Mori, director of Kimochi Board and Care Home.

Maher's resolution called for the Peace Plaza to be "irrevocably dedicated to and maintained as open space for public gatherings and events that feature Japanese culture and for other public purposes."

Over the last 10 years, the Plaza has been the site of many community events including the Cherry Blossom Festival, the J-Town Street Fair and the Summer Festival. "It was a concession for tearing down people's homes, when redevelopment occurred in the Western Addition in the 1960's," stated Hayashi.

The community is now looking into asking the city to purchase the plaza and designate it as public domain, otherwise Louie will have the option of charging rent for its use. □

Tower Height Chopped For More Light In Park

The Asian Law Caucus together with the Committee for Better Parks and Recreation in Chinatown, Chinatown Neighborhood & Improvement Resource Center, Chinatown Coalition for Better Housing and San Franciscans for Reasonable Growth, worked out an out-of-court settlement in late January 1985 with the developer of an office highrise on Montgomery Street. Construction of the 24-story building on 505 Montgomery Street will cast a shadow on a popular Chinatown park.

The settlement with the Empire Group, the developer of the project, included a change in the design to reduce the shadow it would have cast on the park. The original tower would have shaded 10 to 40% of Portsmouth Square for up to two hours in the morning during much of the year, according to an environmental impact study done on the project.

Portsmouth Square is one of the few open spaces remaining in Chinatown. It is a popular relaxation site for many of Chinatown's elderly. Last year alone, thousands of city dollars were spent improving the children's tot lot area of the park.

The developers agreed to delete 23 feet from its original plan. In addition, Edwin Lee, Asian Law Caucus attorney, who negotiated together with Sue Hestor on behalf of the groups, stated that if the developers fail to incorporate these changes into their final design, they are liable for \$2 million in damages to the Trust for Public Land. The money would be used to purchase a park for Chinatown residents.

Even while negotiations were concluding, the groups filed suit against the developer on January 25 to preserve its standing before the courts. The opposition began its work last year, after the Planning Commission approved the project and the Board of Permit Appeals sustained that approval.

Although there are restrictions on building heights that would cast shadow on city parks, the SF Board of



Elderly are frequent users of Portsmouth Square. (ALC File photo)

Supervisors had exempted the 505 Montgomery Street building from those restrictions. Proposition K, which passed overwhelmingly in last year's city elections put a cap on shadows allowed on city parks.

Even with the height reduction, Gary Wong, co-chair of the Chinatown Better Parks & Recreation Committee was not very pleased. "The new design does not conform with what we expect under Proposition K. This only strengthens our resolve to demand hard, objective guidelines for the Sunlight Ordinance."

The design change for the highrise may have provoked another matter, noted Dean Macris, head of the Planning Commission. By reducing the shadow impact of one highrise, he said, it means that the one to its east, office tower under construction at 345 California will be casting a shadow on Portsmouth.

Although the settlement agreement did not please Macris, Lee stated that the negotiations would not have been necessary if the city adequately represented the viewpoints of the residents. "People feel that the city could do better to protect their interests," he added. □

Gunne Sax Workers Say Termination Unfair

17 of about 20 cutters of Gunne Sax Manufacturing Company in San Francisco are asking the Asian Law Caucus to look into the fairness of their termination. Without any advance notice, they received a letter on March 22, stating that the whole cutting department would be permanently laid off because of an internal reorganization.

Jessica McClintock, owner of the company, stated in a letter to them that because of expansion needs and to stay competitive in the marketplace, the company will contract out its cutting, sewing and pressing needs and concentrate its efforts in designing and marketing its products. Gunne Sax currently has over 50 contracting shops throughout the Bay Area and Sacramento. 70% of its workers are women and Chinese, Filipinos, Laotian and Vietnamese make up the bulk of its workforce.

Many of the workers have worked for the company for 10 to 15 years. They felt it was unfair for the company to terminate them in just a day's notice, even though they were given a week's wage and 2 days severance pay for each year that they have been with the company. "It should have taken a more humane and a less drastic approach," complained one of the cutters.

Asian Law Caucus attorney Ed Lee is looking into the benefits due to the cutters. He said that many of them may have lost 1984-85 profit sharing distribution because they were terminated a few months before the

fiscal year ended. In addition, Lee is reviewing and explaining the terms of their pension plan, which they never completely understood before.

According to Lee, the workers feel remorseful as they look back to the early 1970's when they refused to be unionized. One of them said that this could not have happened to them if they had a union. They vowed that if they found other employment, they would remember this and seriously look into their bargaining capabilities.

Although the company has no plans for further lay-offs, the remaining workers, who are mostly seamstresses and warehouse personnel, fear they may receive the same fate as the cutters because Gunne Sax is continually changing. They have asked the International Ladies Garment Workers Union (ILGWU) to organize them. But the company made efforts to thwart the organizing drive by firing three Filipino workers. As a result the union staged a protest against the company on June 20, where many of the laid-off cutters joined the picket line. In addition, the ILGWU has called for a statewide boycott of all Gunne Sax products beginning June 20.

Gunne Sax, which has an annual sales of over \$50 million, also carries the label Jessica McClintock and Jessica. Its line of clothing includes high fashion women's dresses, evening and bridal gowns and children's clothes. □

Residential . . .

(Continued to page 4)

units, but the units were in violation of health and safety standards according to State laws and city ordinances.

Although the May eviction came from Wong, the tenants are anticipating another eviction notice

from the owner of the building herself, Marcelle Granger of Oakland. Lee, who's preparing the eviction defense with the assistance of Paul Yuen and Liz Chang, ALC paralegal and law-clerk, respectively, stated that this is not an ordinary eviction case. "We are looking into other avenues to preserve the tenants' right to remain in the building." □